

In order to collect benefits under the Workers Compensation Act claimant must prove personal injury by accident arising out of and in the course of his employment with the employer. It is claimant's burden under K.S.A. 44-501, as amended by S.B. 649

(1996), and K.S.A. 44-508(g), as amended by S.B. 649 (1996), to establish claimant's right to an award of compensation and to prove the various conditions upon which claimant's right depends by a preponderance of the credible evidence. Claimant's position must be shown to be more probably true than not true on the basis of the whole record.

The facts in this case, while somewhat contradictory, do indicate claimant was at the respondent's bar on the date of the alleged injury. The claimant, the respondent/owner and respondent's employee all agree that claimant would periodically fill in for the respondent as a bartender when needed. This arrangement, while not a strict employer/employee relationship, did result in claimant performing work for respondent and receiving compensation in the form of credits towards his bar tab and periodic personal loans. On the date of the alleged injury claimant was in the respondent's establishment. The evidence is contradictory regarding whether claimant was there as a patron or an employee. Regardless, claimant's injury occurred while claimant was in the back of the bar obtaining ice from the ice machine, a normal employment activity for claimant when he was working with respondent. Respondent testified that claimant was scheduled to work that day because one of her bartenders had quit and her parents were in town. The Appeals Board acknowledges claimant's statement provided to the insurance company and his testimonies at the preliminary hearing is contradictory. Nevertheless, the testimonies of respondent's employee Gary Weatherly and respondent/owner Jurlene Ruth Jimenez do confirm this unusual employment relationship did exist on the date of the accident.

For purpose of preliminary hearing the Appeals Board finds claimant's accidental injury on September 6, 1995 did arise out of and in the course of his employment with respondent and further finds that an employer/employee relationship between claimant and respondent existed at the time of the injury.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated February 15, 1996 should be, and is, hereby affirmed and remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c:     Roger Riedmiller, Wichita, KS  
       Vincent A. Burnett, Wichita, KS  
       E.L. Lee Kinch, Wichita, KS  
       Nelsonna Potts Barnes, Administrative Law Judge  
       Philip S. Harness, Director